IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

ED BUTOWSKY,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 4:18-CV-00442**
	§	
DAVID FOLKENFLIK, ET AL.,	§	**Judge Mazzant/Magistrate Judge Craven**
	§	
Defendants.	§	

AGREED ORDER REGARDING THE PRODUCTION OF ELECTRONICALLY
STORED INFORMATION AND HARD COPY DOCUMENTS

The Court ORDERS as follows:

This Order (the "ESI Protocol") governs the production of electronically stored information ("ESI") and hard copy documents (collectively, "document" or "documents"), and specifies the form in which parties shall be required to produce documents for use in the above-captioned case (the "Litigation"). This ESI Protocol streamlines production to promote a "just, speedy, and inexpensive determination" of this action, as required by Federal Rule of Civil Procedure 1. Nothing in this ESI Protocol shall limit a party's right to seek or object to discovery as set out in applicable rules or to object to the authenticity or admissibility of any document produced in accordance with this ESI Protocol.

I. **GENERAL PROVISIONS**

A. This ESI Protocol governs productions made after the date of its entry by the Court. Documents previously produced by a party do not need to be reproduced to comply with the protocol outlined herein.

B.   The production of documents in a manner consistent with the specifications set forth in this ESI Protocol shall, absent exceptional circumstances, be sufficient to satisfy a producing party's obligation to produce its materials in reasonably useable form and as they are maintained in the ordinary course of business.

C.   <u>Search Terms and Custodians</u>: With regard to the Order dated June 5, 2020 [Dkt. 147] (the "Order"), the parties have met and conferred and have agreed to retain a third party to conduct a forensic examination of Plaintiff's accounts and devices at Plaintiff's expense. The parties have further established a set of data sources, search terms, and date ranges governing the forensic examination, attached hereto as Appendix 1. As discovery proceeds and documents are reviewed, the Parties agree that the search terms and custodians may be edited and supplemented, for good cause.

D.   <u>Redactions</u>: The parties shall use redactions to protect privilege and attorney work-product, taking care to redact the privileged portion of any document and to produce the non-privileged portion.

E.   <u>Parent-Child Relationships</u>: Parent-child relationships for all documents (*e.g.*, the association between an attachment and its parent email, or a spreadsheet embedded within a word processing document) must be preserved. Electronic documents attached to an email, or electronic documents and hard-copy documents attached or appended to a hard-copy document, are to be produced contemporaneously and sequentially immediately after the parent document.

F.   <u>Privilege Claims</u>: For documents withheld from production or redacted pursuant to a claim of privilege or work product protection, the producing party shall provide one or more privilege logs in Excel or a similar electronic form that allows text searching and organization of data.

1. Every privilege log will contain the following information for each item not produced for reasons of privilege: (1) the name(s) of the person(s) who created and received the document; (2) the dates on which the document was created and/or sent and/or received; (3) a description of the nature of the document sufficient to enable the receiving party to assess the applicability of the privilege or protection; and (4) the privilege claimed. Anyone included on the log who is alleged to be an attorney shall be identified as such by adding an asterisk after their names in the privilege log.

2. If a document contains numerous email threads (for example, a top-level email that forwards one or more emails below), each email thread shall be logged as a separate entry to facilitate protection of only the privileged portions of the document and production of all non-privileged portions of the document.

G.   TIFF Image Files: The parties agree that all documents will be produced as single-page black and white Group IV TIFF image files of at least 300 dpi resolution, except as provided in section III.B. Page size shall be 8.5 x 11 inches unless, in the reasonable judgment of the producing party, a particular item requires a different page size. Each image file will use the Bates number of the page as its unique file name. Original document orientation as displayed in the native file should be maintained in the TIFF image (*e.g.*, portrait to portrait and landscape to landscape).

H.   Text Files: Each document produced under this ESI Protocol shall be accompanied by a single, multipage text file containing all text for that item, not one text file per page. Each text file shall be named using the Bates number of the first page of the corresponding production item.

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1. *OCR*: The text for each hard copy document shall be generated by applying optical character recognition (OCR) technology to the scanned image of the document. The parties will endeavor to generate accurate OCR and will utilize quality OCR processes and technology. The parties acknowledge, however, that due to poor quality of the originals, not all documents lend themselves to the generation of accurate OCR.

2. *ESI*: The text of each ESI item shall be extracted directly from the ESI native file. To the extent that is not technically possible (*e.g.*, the underlying native file is an image file), the text for each ESI item shall be generated by applying OCR to the native file under the provision above.

3. *Redacted Text*: The text file corresponding to a redacted document may be generated by applying OCR to the redacted TIFF file under the provision above.

4. *Foreign Language Text*: The parties will make reasonable efforts to ensure that all technologies and processes used to collect, process, and produce the text of any document—including all TIFF conversion and OCR processes, and the extraction of text from native files—preserves all foreign language text, punctuation, and other characteristics as they exist in the source native file.

I. Bates Numbering:

1. Each TIFF image produced under this ESI Protocol must be assigned a Bates number that must always: (1) be unique across the entire document production; (2) maintain a constant length of nine numeric digits (including 0-padding) across the entire production; (3) contain only alphanumeric characters, no

special characters or embedded spaces; and (4) be sequential within a given document.

2. A producing party should not skip a Bates number or sets of Bates numbers in a production. The producing party should provide a placeholder (*e.g.*, gap sheet, dummy image) within the production where a gap in Bates number(s) would otherwise exist.

3. The producing party will brand all TIFF images with its corresponding Bates number, using a consistent font type and size. Parties will make reasonable efforts to avoid obscuring any part of the underlying image with the Bates number.

J.   Color: If a receiving party finds the black and white version of a document insufficient, the receiving party may reasonably and for good cause request that the producing party provide a color image.

K.   Confidentiality Designations: If a particular document is being produced subject to a confidentiality designation as outlined in the Parties' Stipulated Protective Order (Dkt. 67), the designation shall be stamped on the face of all TIFF images pertaining to the document. The confidentiality designation should also be reflected in the "Confidentiality" field specified in Appendix 2.

L.   Load Files: All productions will be provided with image and data load files. The image load file must reference each TIFF file in the corresponding production, and the total number of TIFF files referenced in the load file must match the total number of image files in the production. The total number of documents referenced in a production's data load file should match

the total number of designated document breaks in the corresponding image load file for that production.

    M.   <u>Fields</u>:

        1. Documents shall be produced with all fields set forth in Appendix 2 to the extent that such fields can be reasonably extracted from the native file or created using an automated process.

        2. Documents shall be produced with the following fields regardless of whether the fields may be populated automatically from the native file or created using an automated process: (a) BegBates, (b) EndBates, (c) BegAttach, (d) EndAttach, (e) Custodian, (f) PgCnt, (g) Confidentiality, (h) RecordType, and (i) Redacted.

        3. All field information will be provided in a .DAT file consistent with the descriptions and the field names provided in Appendix 2.

II.   PRODUCTION OF HARD COPY DOCUMENTS

    A.   <u>Unitization of Hard Copy Documents</u>: The parties will produce images of hard copy documents unitized to the extent the original documents appeared to be units in physical form, with attachments following parents. There is no requirement that a producing party objectively code hard copy documents to provide metadata fields not otherwise available.

III.   PRODUCTION OF ELECTRONICALLY STORED INFORMATION

    A.   <u>Processing</u>:

        1. *Auto Date/Time Stamps*: ESI items shall be processed so as to identify placeholders for automatically inserted dates, times, and file names (*e.g.*, AUTODATE, AUTO FILENAME).

2. *Hidden Text*: ESI items shall be processed in a manner that maintains and displays hidden columns or rows, hidden text or worksheets, speaker notes, tracked changes and comments.

3. *Embedded Objects*: Some files may contain embedded objects. Such objects shall be extracted and produced as separate files.

4. *Compressed Files*: Compressed file types shall be decompressed in a reiterative manner to ensure that a zip within a zip is decompressed into the lowest possible compression resulting in individual files.

B.   Production of Native Items:

1. The parties shall produce a Bates-numbered placeholder TIFF image of each spreadsheet-application file (*e.g.*, MS Excel) and presentation file (*e.g.*, PowerPoint) together with the full native version of each file.

2. The parties shall produce a Bates-numbered placeholder TIFF image of each audio/visual file together with the full native version of each file.

C.   Redaction:

1. Where ESI items need to be redacted the ESI items shall be produced in TIFF with the OCR text of the redacted TIFF and with each redaction clearly indicated on the face of the TIFF.

2. If ESI redacted and partially withheld from production are audio/visual files, the parties shall meet and confer to discuss the appropriate manner for the producing party to produce the unredacted portion of the content.

D.   De-duplication:

1. The producing party need only produce a single copy of a particular ESI item.

2. Producing parties will globally de-duplicate ESI across the population of the party's records.

3. Each producing party will designate MD5 or SHA-1 as its default deduplication algorithm to create and compare hash values for exact matches. The resulting hash value for each item shall be reflected in the Hash Value field specified in Appendix 2.

4. Entire document families may constitute duplicate ESI. De-duplication shall not break up document families.

5. All custodians who were in possession of a de-duplicated document must be identified in the Custodian Other metadata field specified in Appendix 2.

IV. MISCELLANEOUS PROVISIONS

A. Objections Preserved: Nothing in this ESI Protocol shall be interpreted to require disclosure of information protected by privilege or the work-product doctrine. Except as provided expressly herein, the parties do not waive any objections as to the production, discoverability, authenticity, admissibility, or confidentiality of documents.

B. Cooperation: The parties are ordered to act cooperatively and meet and confer. No party may seek judicial relief concerning this ESI Protocol unless it first has conferred with the applicable producing or requesting party.

C. Proportionality: The parties agree to negotiate in good faith regarding requests for and production of documents to ensure discovery is reasonable and proportional to the matter.

D. Existing Protective Order: Nothing in this Stipulation shall displace or limit any right or obligation imposed by the existing Protective Order in this case (Dkt. 67).

SO ORDERED.

SIGNED this 26th day of June, 2020.

CAROLINE M. CRAVEN
UNITED STATES MAGISTRATE JUDGE

<u>**AGREED AS TO FORM AND SUBSTANCE:**</u>

/s/ Ty Clevenger
Ty Clevenger, attorney for Plaintiff

/s/ Laura Lee Prather
Laura Lee Prather, attorney for Defendants

Appendix 1 – Search Locations and Terms

The search terms will be applied to the following accounts, platforms, and devices:

Messaging services and platforms:
Signal
Wickr
Gizmo
Telegraph
Zoom

Social Media Platforms:
Facebook messenger and private posts
Twitter direct message and private tweets
Instagram
Snapchat
TikTok
Vimeo
YouTube
Reddit
LinkedIn direct message and private posts
Pinterest
Tumblr
NextDoor

Email accounts:
googie18@aol.com
Butowsky32@gmail.com
ebutowsky@gmail.com
ed@chapwoodinvestments.com
edwardbutowsky@gmail.com
googie32@protonmail.com
gizmo32@protonmail.com
ebutowsky@icloud.com

Devices:
Phones
iPads
Hard drives
Computer, both personal and work

SEARCH TERMS:

1. Couch
2. Lyons
3. Fairbanks
4. Howley
5. Hoft
6. Wheeler
7. Zimmerman
8. Housley
9. *@foxnews.com
10. Seth
11. Aaron
12. Mary
13. Joel
14. Julian OR Assange
15. WikiLeaks
16. Powe
17. Ratner
18. Talk AND Media
19. Kunstler
20. Hersh
21. Sy
22. Della*Camera
23. DNC
24. Isikoff
25. Cuomo
26. Marraco
27. Spicer
28. Sessions
29. *donaldtrump.com
30. *.gov
31. "White House"
32. Kash
33. "McInerney" AND ("Rich" OR "Wheeler")
34. "vmaya" AND ("Rich" OR "Wheeler")
35. "Peter Berg" AND ("Rich" OR "Wheeler")
36. "Kim Sams" AND ("Rich" OR "Wheeler" OR "NPR" OR term! OR "services agreement")
37. McCabe
38. Ebay
39. Dropbox
40. Debunking
41. Johnson AND Larry
42. Binney
43. Loomis

ORDER REGARDING THE PRODUCTION OF ELECTRONICALLY
STORED INFORMATION AND HARD COPY DOCUMENTS   **PAGE 11**

44. Wiebe
45. Schoenberger
46. Defango
47. Chavez
48. Manuel
49. Manny
50. Flippo
51. Burkett
52. Fitzgibbons
53. Shadowbox
54. Googie
55. FBI
56. Whysprtech*
57. David AND Edwards
58. "Googie 32"
59. "Googie32"
60. "Googie 18"
61. "Googie18"
62. "Googie L.P."
63. "Googie LLP"
64. ("pay" or "payment" or "paid" or "money" or "deposit" or "donate" or "donation") and ("Couch" or "AFM" or "AFMG" or "America First" or "DC Patriot")
65. ("investigate" or "investigation" or "investigator") and "Rich"
66. ("recording" or "video" or "audio" or "file") and ("Aaron" or "Rich")
67. Doug AND Berlin
68. Thin Blue
69. ThinBlue
70. Reaganite
71. "Judicial Watch"
72. Fitton
73. "Judicialwatch.org"
74. ("video chat" or "video call" or "zoom" or "invited you to a meeting") and "Rich"
75. "13 Hours"
76. "Benghazi" and ("book" or "movie" or "deal" or "idea")
77. "Mulroy"
78. "Berg" and ("Rich" or "DNC" or "Russia" or "hack" or "Trump" or "WikiLeaks" or "Assange")
79. "Patel"
80. ("Devin" or "Nunes") and ("Rich" or "DNC" or "Russia" or "hack" or "Trump" or "WikiLeaks" or "Assange")
81. "Dee-O" OR "Dee O." OR "D.O."
82. Fox
83. "death" or "die"
84. purple
85. Rich and (.gov or Nunes or committee or congress! or Graham or Rep! or Senat!)
86. "video message"

87.   "goo.gl"
88.   "please watch"
89.   "Jonathan Rich"
90.   Malia
91.   Beth AND (Bogaerts or Blackburn)
92.   Orone OR Laizerovich
93.   ILI AND Solutions
94.   Wigdor
95.   *@wigdor
96.   Christensen
97.   Willemin
98.   Folkenflik
99.   NPR
100.   "National Public Radio"
101.   Democratic /3 National
102.   Nunes
103.   Retract!
104.   Reputation!
105.   Kelsey w/3 Mulka
106.   Bill AND Shine
107.   Kathryn AND Murdoch
108.   Dianne AND Brandi
109.   Burkman
110.   Wasserman*Schultz
111.   Brazile
112.   Blaugrund
113.   McGovern
114.   VIPS
115.   Deborah AND Sines
116.   (Shawn or Sean) AND Lucas
117.   Mueller
118.   Chapin
119.   Gogoi
120.   Cook w/3 ("Leslie" OR "Les")
121.   BuzzFeed
122.   Brian AND Stelter
123.   Soledad AND O'Brien
124.   Bannon
125.   Flores
126.   Lie
127.   Lying
128.   Misrepresent
129.   False
130.   Truth
131.   Defam!
132.   Libel

133. Slander
134. Brad AND Bauman
135. Pastorum
136. Darcy
137. "New York Times"
138. "Media Matters"
139. Police Department AND (Washington OR Metro OR Metropolitan) DC
140. "Morgan Stanley"
141. Sally AND Davis
142. Blake AND Hounshell
143. Claudia AND Koerner
144. Ingrisano
145. Susman AND Godfrey
146. Gottlieb AND Michael
147. Governski
148. Boies AND Schiller
149. Leonard AND Gail
150. Kay-Oliphant
151. Agrawal
152. Massey AND Gail LLP
153. Subramanian
154. Elisha AND Barron
155. Gloria AND Park
156. Turner AND Broadcasting
157. Anderson AND Cooper
158. Tuchman
159. Kludt
160. Feuer
161. Vox
162. Coaston
163. Bailey AND Glasser
164. Greg! AND Porter
165. Michael AND Murphy
166. CrowdStrike
167. Perkins*Coie
168. Gottlieb AND David
169. Lawrence AND Pearson
170. Schwab AND (term! OR "NPR" OR "Rich" OR "Woodhcap" OR "services agreement")
171. Chris AND Richie (term! OR "NPR" OR "Rich" OR "Woodhcap" or "services agreement" OR "Woodchap")
172. Bart AND Crowder (term! OR "NPR" OR "Rich" OR "Woodhcap" OR "services agreement")
173. David AND Webb
174. Corsi
175. Refet AND Kaplan
176. Greg AND Wilson

177. Sammon AND (Bill OR William)
178. Zweifach
179. Michael AND Clemente
180. John AND Moody
181. Jay AND Wallace
182. Robert AND Hannigan
183. Porter AND Berry
184. Briganti
185. Steve AND Doocy
186. Ainsley AND Earhardt
187. Gavin AND Hadden
188. Griff AND Jenkins
189. Brian AND Kilmeade
190. Napolitano
191. Tom AND Lowell
192. Forensicator
193. Welltraveledfox
194. Adelson AND (Sheldon OR Matan) AND ("NPR" OR "Rich" OR "Wheeler" OR "Wigdor" OR "Folkenflik" OR "Assange" OR "Trump")
195. Jonah AND Goldberg AND ("NPR" OR "Rich" OR "Wheeler" OR "Wigdor" OR "Folkenflik")
196. Fujihara AND ("FINRA" OR "license" OR "Woodchap" OR term! OR "Rich" OR "NPR" OR "damages")
197. Jeff AND Spears AND ("FINRA" OR "license" OR "Woodchap" OR term! OR "Rich" OR "NPR" OR "damages")
198. Fastball
199. Morgan AND Arnold
200. Jeff AND Morgan
201. Bale AND (Gary OR Linda) AND (cancel! OR fraud! OR term! OR complain! OR damages OR sue OR lawsuit OR fine)
202. Janet Mariani AND (cancel! OR fraud! OR term! OR complain! OR damages OR sue OR lawsuit OR fine)
203. Granderson AND (refer! OR customer! OR cancel! OR complain! OR sue OR lawsuit OR "NPR" OR "Wheeler" OR "Rich")
204. Winfred AND Tubbs AND (refer! OR customer! OR cancel! OR complain! OR sue OR lawsuit OR "NPR" OR "Wheeler" OR "Rich")
205. Frances AND Mitchell AND AND (cancel! OR fraud! OR term! OR complain! OR damages OR sue OR lawsuit OR fine)
206. Michael AND Bay AND ("Rich" or "DNC" or "Russia" or "hack" or "Trump" or "WikiLeaks" or "Assange" or "NPR" or "Folkenflik")
207. Woodchap AND ("Schwab" or "Waterford" or "SEC" or "FINRA" or "RIA" or complain!)
208. Waterford AND ("FINRA" OR "license" OR "Woodchap" OR term! OR "Rich" OR "NPR" OR "damages")
209. David AND O'Connor AND ("FINRA" OR "license" OR "Woodchap" OR term! OR "Rich" OR "NPR" OR "damages")

210.   Knippa AND ("Schwab" or "Waterford" or "Woodchap" or "SEC" or "FINRA" or "RIA" or complain! or fraud! or cancel! or term! or damages OR sue or lawsuit or fine)
211.   Corey AND Smith AND ("Schwab" or "Waterford" or "Woodchap" or "SEC" or "FINRA" or "RIA" or complain! or fraud! or cancel! or term! or damages OR sue or lawsuit or fine)
212.   Kinsale AND ("Schwab" or "Waterford" or "Woodchap" or "SEC" or "FINRA" or "RIA" or complain! or fraud! or cancel! or term! or damages OR sue or lawsuit or fine)
213.   Cholene AND Espinoza AND ("Rich" or "Ratner" or "Wheeler" or "Wigdor")
214.   Bill AND Pierce AND ("Rich" or "Ratner" or "Wheeler" or "Wigdor" or "Zimmerman" or "Housley" or "DNC" or "Russia" or "hack" or "WikiLeaks" or "Assange")
215.   Lara AND Logan AND ("Rich" or "DNC" or "Russia" or "hack" or "Trump" or "WikiLeaks" or "Assange" or "NPR" or "Folkenflik" or "Zimmerman" or "Wheeler" or "Wigdor")
216.   Robert AND Tobey AND ("cease and desist" or "Blaugrund" or lawsuit or sue or defam!)
217.   Lindeman AND ("Rich" or "Couch" or "Wheeler" or "Wigdor" or "Zimmerman" or "Housley" or "DNC" or "Russia" or "hack" or "WikiLeaks" or "Assange")
218.   Turnage AND ("Zimmerman" or "Rich" or "WikiLeaks" or "Assange" or "Wheeler")
219.   Owl AND Cybersecurity AND ("Zimmerman" or "Rich" or "WikiLeaks" or "Assange" or "Wheeler")
220.   Peter AND Newsham AND ("Rich" or "WikiLeaks" or "DNC" or "Assange" or hack or "Russia")
221.   Craig AND Murray AND ("Rich" or "WikiLeaks" or "DNC" or "Assange" or hack or "Russia" or "Couch" or "Zimmerman")
222.   Lindsay AND Ram AND ("Rich" or "WikiLeaks" or "DNC" or "Assange" or hack or "Russia")
223.   Grott AND (fraud! or "Ratner" or sue or lawsuit)
224.   Zac AND Crain AND ("D Magazine")

- Words in all caps are connectors
- * is a wildcard
- ! is a root expander
- /# means the terms appear with # words of each other

Appendix 2 – Production Fields

Field Name	Field Description
BegBates	The beginning Bates number for the document.
EndBates	The ending Bates number for the document.
BegAttach	The beginning Bates number for each attachment to a produced document.
EndAttach	The ending Bates number for each attachment to a produced document.
Confidentiality	The confidentiality designation for the document.
FamRngStart	The beginning Bates number for the family which contains the document.
FamRngEnd	The ending Bates number for the family which contains the document.
PgCnt	Number of pages contained in the document.
Custodian	Custodian of the data.
Author	The author of the data.
Create Date/Time	The data and time the data or document was created.
Last Modified Date/Time	The data and time the data or document was last modified.
Last Accessed Date/Time	The data and time the data or document was last accessed (other than for the purposes of collection and production in the Investigation).
Filename	The file name for the document (blank for e-mail).
File Extension	File extension.
FileSize	The size of the native document in bytes (blank if the value equals 0).
SentDate	The date the e-mail was sent (blank for files).
SentTime	The time the e-mail was sent (blank for files).
RecDate	The date the e-mail was received (blank for files).
RecTime	The time the e-mail was received (blank for files).

Field Name	Field Description
Subject	Lists the contents of the Subject field for an e-mail (blank for files).
From	Lists the contents of the From field for an e-mail (blank for files). This indicates who sent the e-mail. This value may include an Internet address or an internal Microsoft Outlook address or alias.
To	Lists the contents of the To field of an e-mail (blank for files). This indicates who received the e-mail.
CC	Lists the contents of the CC (carbon copy) field of an e-mail (blank for files). This indicates who was copied on the e-mail.
BCC	Lists the contents of the BCC (blank carbon copy) field of an e-mail (blank for files). This indicates who was copied on the e-mail without the other recipients knowing they were copied.
RecordType	To indicate "Paper," "Hard Copy," or "HC" if a hard copy document, and "ESI" if it is an ESI Item.
Redacted	User-generated field that will indicate redactions. "X," "Y," "Yes," and "True" are all acceptable indicators that the document is redacted. Otherwise, blank.
HashValue	The hash value of the file using the algorithm designated by the producing party.
DocLink	Path and file name of the native file for native files. This is the location in the output where the native file is stored. This value is blank if the file is not delivered natively.
TextLink	Path and file name of the text file for the extracted text or OCR for the document.